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**SEP 28 2005**

**OFFICE OF PETITIONS**

In re	:
Charles A. Finn	:
Application No. 09/934,967	: DECISION ON APPLICATION
Filed: August 22, 2001	: FOR PATENT TERM ADJUSTMENT
Patent No. 6,899,636	:
Issued: May 31, 2005	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b)", filed July 29, 2005, requesting correction of the patent term adjustment (PTA) indicated on the patent.

The application for patent term adjustment is **DISMISSED**.

Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On May 31, 2005, the above-identified application matured into U.S. Patent No. 6,899,636. The patent issued with a PTA of twenty-five (25) days.

It appears that Patentee asserts entitlement to a PTA of six hundred thirty-nine (639) days. Patentee states that a "reasonable period for prosecution of this application would be no more than 24 months so that a proper and equitable term extension should be 21 months, 9 days."

Patentee states that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of twenty-five (25) days based on an adjustment for PTO delay of two hundred eighty-two (282) days pursuant to 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.703(b), reduced by Applicants' delays of three (3), thirty-six (36), sixty-three (63), and eighty-three (83) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and seventy-two (72) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. 1.704(c)(8).

Patentee argues he should not have been assessed applicant delay for the untimely filing of amendments after two separate final Office actions, because the Examiner withdrew both final rejections. Patentee's argument is untimely raised, as this argument should have been made with an application for patent term adjustment pursuant to 37 C.F.R. § 1.705(b), submitted after the mailing of the Notice of Allowance and prior to payment of the issue fee.

With respect to the seventy-two (72) days of applicant delay assessed pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8), the adjustment has been reviewed and found to be correct. The Notice of Allowance was mailed on January 11, 2005. Applicant filed a supplemental declaration on March 21, 2005. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. § 1.704(c)(10).<sup>1</sup> An oath or declaration is listed as an example of a paper that is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application.

Receipt of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. Patentee's request for a refund of the fee is denied.<sup>2</sup>

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<sup>1</sup> See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001).

<sup>2</sup> See Comment 1 in Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14, 65 Fed. Reg. 54366 (Oct. 3 2000) (stating that the fee set forth in 37 C.F.R. 1.18(e) is charged to allow the Office to recover the estimated average cost of treating applications for patent term adjustment, and is not refundable even in the event of Office error).

Telephone inquiries specific to this matter should be directed to  
Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Karin Ferriter". The signature is written in a cursive, flowing style.

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy